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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 947

FRANK WHITE ET UX, MRS. FRANK WHITE,
Petitioners,

vs.

W. A. THOMAS, COLLECTOR OF INTERNAL REVENUE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

WM. A. BLAKLEY,
Counsel for Petitioners.

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To the Honorable the Supreme Court of the United States:

Frank White, and wife, Mrs. Frank White, pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above case on the 5th day of December (R. 141), 1940, affirming the judgment of the District Court of the United States for the Northern District of Texas, Dallas Division, and in this connection respectfully show:

I.

Summary Statement of the Matter Involved.

A. History of the Case.

This is an action at law brought in the District Court of the United States for the Northern District of Texas, Dallas Division, by Frank White and wife, Mrs. Frank White, petitioners, as plaintiffs, against W. A. Thomas, Collector of Internal Revenue for the Second Collection District of Texas, respondent herein, as defendant, for the refund of income taxes for the year 1932 alleged to have been unlawfully collected by respondent from petitioners.

Two separate suits were originally filed in the trial court, one by Frank White as plaintiff, and the other by Mrs. Frank White as plaintiff, against W. A. Thomas, defendant. The two suits were consolidated for trial, the order for consolidation appearing in the judgment of the trial court (R. 131).

Trial was had before Hon. William H. Atwell, District Judge, sitting without a jury, and at the conclusion thereof, on March 18, 1940, judgment was rendered in favor of defendant in the trial court, that plaintiffs take nothing, and that defendant recover his costs (R. 131). Findings of fact and conclusions of law were included by the trial judge in his opinion (R. 129).

Plaintiffs duly and timely perfected their appeal from said judgment to the Honorable United States Circuit Court of Appeals for the Fifth Circuit. All of the proceedings and evidence in the trial court were designated as the Record on Appeal (R. 135).

The appeal was argued before Circuit Judges Sibley, Holmes, and McCord, and on December 5, 1940, the Circuit Court of Appeals rendered its judgment affirming the judg-

ment of the District Court, being found in the Record herein at page 141, and officially reported at 116 F. (2d) 147.

Appellants Frank White and Mrs. Frank White duly and timely filed motion for rehearing in the Circuit Court of Appeals, which motion was by that Court denied, without opinion, on January 14, 1941 (R. 149).

B. Nature of the Case.

The statement of the facts as contained in the opinion of the Court below (found herein at R. 138), is here set out as being a concise statement of the facts. It reads as follows:

Frank White and his wife sued the Collector of Internal Revenue for income taxes for the year 1932 which were exacted on account of $125,000 paid that year to Frank White by the executors of the will of Mrs. Margaret A. Shannon and by the trustees of a charitable trust to which she had devised the bulk of her large estate. The payment was in compromise and settlement of a suit brought by White against them to recover a ranch consisting of about 124,000 acres and valued at about $700,000, and a counter suit by them against White to remove his claims to any of the estate as a cloud upon their title. The claim of White was that Mrs. Shannon, and her husband before he died and devised his lands to her, had given the ranch to him. The evidence shows that he had long lived with the Shannons and was beloved of them though no kin. He testified of things they said to him and others which indicated that the ranch should be his; but there was no present gift, he had nothing in writing, and no possession of it. The ranch was in fact expressly mentioned in Mrs. Shannon's will as devised to the charitable trust. The compromise agreement was that White be paid $125,000 in addition to all properties given him by the will, and that White "releases all claims to any properties passing under the last will and last testa-

ment of said Margaret A. Shannon deceased except such as are specifically bequeathed to him to which reference has heretofore been made, and agrees upon request of the parties of the first part either as trustees or executors, to make, execute and deliver proper written conveyances, acquittances and releases from any and all claims heretofore made or to be made by him * * *." Judgments were accordingly taken against him for all the properties except those given him by the will.

II.

Jurisdiction.

The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938. The judgment of the Circuit Court of Appeals was entered December 5, 1940 (R. 141). Petition for rehearing was denied January 14, 1941 (R. 149). This petition for writ of certiorari was filed April 12, 1941.

III.

Questions Presented.

Two questions are presented for consideration, namely:

1. Whether the sum of $125,000.00 received by petitioner, Frank White in compromise and settlement of his suit for title to certain land which he claimed by virtue of a gift of the same to him, was income to petitioners within the meaning of the term "income" in the Sixteenth Amendment to the Constitution of the United States, as defined by this Court in *Eisner* v. *Macomber,* 252 U. S. 189, 40 S. Ct. 189, 64 L. Ed. 521.

2. Whether, if such amount be considered income within the meaning of the Sixteenth Amendment, the same was exempt from petitioners gross income as being "the value of property acquired by gift," under Section 22 (b) (3) of the Revenue Act of 1932 (47 Stat. at L. 169, Chap. 209).

IV.

Reasons Relied On for the Allowance of the Writ.

1. The United States Circuit Court of Appeals for the Fifth Circuit, has rendered a decision in conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in *Magruder* v. *Segebade,* 94 F. (2) 177, which held that an amount received in compromise and settlement of a claim to a portion of a deceased's estate was not taxable income because the same was not a "gain derived from capital, from labor, or from both combined", within the meaning of the term *Income* in the Sixteenth Amendment to the Constitution, as defined by this Court in *Eisner* v. *Macomber.*

2. The Circuit Court of Appeals for the Fifth Circuit in the instant case has rendered a decision in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Central Railroad Co.* v. *Comm.,* 79 F. (2) 697, and in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in *Farmer's & Merchants' Bank of Catlettsburg* v. *Comm.,* 59 F. (2) 912, which held (1) that the taxable or non-taxable character of an amount received in compromise and settlement of litigation must be determined in the light of the claim from which it was realized; (2) that if the thing claimed would not be taxable income when received, a sum of money accepted in lieu thereof would likewise not be taxable when received.

3. The Circuit Court of Appeals for the Fifth Circuit has decided a Federal question in a way probably in conflict with

an applicable decision of this Court, to wit: *Lyeth* v. *Hoey*, 305 U. S. 188, 59 S. Ct. 155, 83 L. Ed. 119, which held (1) that an amount received by an heir in settlement of a will contest was not subject to income tax, for the reason that such amount was exempt under Section 22 (b) (3) of the Revenue Act of 1932 as "property acquired by * * * inheritance"; (2) the fact that the property was acquired by a compromise agreement rather than through a judgment of the court did not change its character so as to make it subject to income tax; (3) The doctrine that the claimant "realized on a bargaining position" and sold his right to contest for the amount received by him in settlement is disapproved by the Court.

Wherefore, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 9624, styled Frank White, et al., Appellants, versus W. A. Thomas, Collector of Internal Revenue, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals for the Fifth Circuit be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated April 10, 1941.

WM. A. BLAKLEY,
Counsel for Petitioners.